

# HOUSE BILL REPORT

## HB 2763

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**As Reported by House Committee On:**  
Criminal Justice & Corrections

**Title:** An act relating to the crime prevention and privacy compact.

**Brief Description:** Ratifying the crime prevention and privacy compact.

**Sponsors:** Representative Dickerson.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 1/24/06, 1/27/06 [DP].

**Brief Summary of Bill**

- Authorizes Washington to ratify the National Crime Prevention and Privacy Compact (Compact) in order to share criminal history records with other party states for non-criminal justice purposes.
- Requires the Washington State Patrol (WSP) to serve as the state Compact officer for the Compact.
- Requires the WSP to report annually to the Legislature on the Compact's operations and make recommendations for policy changes.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

**Staff:** Yvonne Walker (786-7841).

**Background:**

The Joint Task Force on Criminal Background Check Processes (Task Force) was created by the passage of Engrossed Substitute House Bill 2556 during the 2004 legislative session and was extended an additional year during the 2005 legislative session (SHB 1681). The legislation required the Task Force to review and make recommendations regarding how to improve the state's criminal background check processes. The legislation also required the Task Force to report its findings and recommendations to the Legislature.

One of the Task Force's recommendations was to ratify the National Crime Prevention and Privacy Compact (Compact). The National Crime Prevention and Privacy Act was enacted in 1998. The Compact itself organizes an electronic information sharing system among the federal government and states as a way to exchange criminal history records for non-criminal justice purposes. Under the Compact, the Federal Bureau of Investigation (FBI) and the party states (states that have ratified the Compact) agree to maintain detailed databases of their respective criminal history records and make them available to the federal government and to other party states for authorized purposes.

The Compact requires the FBI and participating party states to provide information and records for the national identification index and the national fingerprint file and also to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for non-criminal justice purposes.

The Compact eliminates duplication. As states become participants of the Compact, the FBI will cease to maintain duplicate criminal records for persons arrested and prosecuted in those states. The FBI will continue to still maintain the fingerprints but they will not maintain the actual records. The FBI's centralized files of state offender records will be discontinued and all users of criminal history records will obtain those records directly from the respective state's central computerized files (or from the FBI if the offender has a federal record).

As a result of Compact ratification, states will be relieved of the burden and cost of submitting arrest fingerprints and charge and disposition data to the FBI for all arrests. Instead they will submit only fingerprints and textual identification data for each person's first arrest.

Thirty-six states have ratified the national Compact and four other states recently passed legislation in 2005.

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### **Summary of Bill:**

Washington will join the national Compact. The WSP will serve as the state Compact officer for the Compact.

The Compact took effect once it was entered into by two or more states and the federal government. In Washington, the Compact will become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government. Once the Compact is adopted and in force, it will remain binding until the state enacts a statute specifically repealing the statute.

The purpose of the Compact is to:

- provide a legal framework for the cooperative exchange between the FBI and party states in providing criminal history information and records;
- provide such records in a timely fashion, to criminal history record repositories of other states and the federal government for non-criminal justice purposes, in accordance with the terms of the Compact;

- provide for the establishment of a council to monitor operations and prescribe system rules for the effective and proper operation of the interstate identification system; and
- require the FBI and each party state to adhere to interstate identification system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

### Responsibilities of Compact Parties

*Federal Bureau of Investigation:* The FBI must appoint a Compact officer who must:

- administer the Compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI;
- ensure that Compact provisions and rules, procedures, and standards are complied with;
- regulate the use of records received from party states when such records are supplied by the FBI directly to other federal agencies;
- provide to federal agencies and to state criminal history record repositories, criminal history records maintained in its database;
- provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and
- modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures.

*Participating Party States:* Each party state must appoint a Compact officer who must:

- administer the Compact within that state;
- ensure that Compact provisions are complied within the state;
- regulate the in-state use of records received through the interstate identification system;
- establish and maintain a criminal history record repository, which must include records for the national identification index and the national fingerprint file and the state's indexed criminal history records for noncriminal justice purposes;
- participate in the national fingerprint file; and
- provide and maintain telecommunications links and related equipment necessary to support the services set forth in the Compact.

In carrying out responsibilities under the Compact, the FBI and each party state must comply with the rules established by the Compact Council (Council) concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of the interstate identification system. Use of the interstate identification system must be managed so as not to diminish the level of services provided in support of criminal justice purposes. In addition, the administration of the Compact must not reduce the level of service available to authorized noncriminal justice users on the effective date of the Compact.

The FBI and participating party states must provide criminal history records (excluding sealed records) to other state criminal history record repositories, criminal justice agencies, and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by

federal statute, federal executive order, or a state statute that has been approved by the Attorney General, that authorizes national indices checks. Any record obtained under the Compact may only be used for the official purposes for which the record was requested. Each Compact officer must establish procedures, consistent with the Compact, which must protect the accuracy and privacy of the records, and must:

- ensure that records obtained under the Compact are used only by authorized officials for authorized purposes;
- require that subsequent record checks are requested to obtain current information whenever a new need arises; and
- ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

Administration of the Compact must not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records for all purposes other than noncriminal justice. In addition, the Compact must not diminish or lessen the responsibilities of any state, whether a party state or a nonparty state regarding the use and dissemination of criminal history records and information.

Record Request Procedures. When submitting a record request:

- Fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes.
- Each request for a criminal history record check utilizing the national indices made under any approved state statute must be submitted through that state's criminal history record repository.
- Each request for criminal history record checks utilizing the national indices made under federal authority must be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which such request originated. Direct access to the national identification index by entities other than the FBI and state criminal history records repositories is not permitted for noncriminal justice purposes.
- A state criminal history record repository or the FBI may charge a fee for handling a request involving fingerprint processing for noncriminal justice purposes.
- If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, must be forwarded to the FBI for a search of the national indices.
- If the FBI positively identifies the subject as having a record then the state criminal history record repository must be advised and the state criminal history record repository must be entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

Establishment of the National Crime Prevention and Privacy Compact Council (Council). The Council is established and will remain in existence as long as the Compact remains in effect. The Council will be administratively located within the FBI and will be comprised of 15

members, each of whom must be appointed by the Attorney General. The Council must meet at least once each year and the meeting must be open to the public. The Council must make available for public inspection and copying any rules, procedures, or standards established by the Council. In addition, the Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under the Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon request. The Council chairman may establish committees as necessary to carry out the Compact.

The Council has initial authority to make determinations with respect to any dispute regarding the Compact and may hold a hearing concerning any dispute. The FBI must exercise to preserve the integrity of the interstate identification system and may appeal any decision of the Council to the Attorney General. Thereafter the FBI may file suit in the appropriate district court of the United States, which must have original jurisdiction of all cases or controversies arising under the Compact.

Washington State Patrol. The WSP is authorized to form a subcommittee, which should include members representing the legislative, judicial, and executive branches of state government to perform the functions of the state Council. Any such subcommittee must include representation of both houses and at least two of the four largest political caucuses in the Legislature. The WSP, or a subcommittee if formed, must:

- review the WSP's operations and procedures and recommend policies to the Compact administrator, including policies to be pursued in the administrator's capacity as the state's representative on the Compact;
- report annually to the Legislature on the Compact's operations and procedures, including recommendations for policy changes; and
- report to the Legislature, no later than December 31, 2007, on the effectiveness of its functioning as the state Council, and recommend any legislation it deems appropriate.

The WSP must appoint one of its members to represent the state at meetings of the Compact when the Compact administrator cannot attend.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2007.

**Testimony For:** The Task Force recommended adoption of the Compact. The Compact permits the FBI's use of the national identification index and the national fingerprint file by each Compact signing state. The WSP will serve as the Compact officer of the state. The Compact allows for Washington to be a member of the Compact and prevents duplication on information.

If Washington was a member of the Compact (which does require legislative action), the WSP would submit fingerprints electronically to the FBI. The FBI would not keep the criminal history records but they would keep the fingerprints on file. If the FBI got a hit on a particular set of fingerprints then they would send a notice back to the WSP electronically. The WSP would then electronically contact the state holding the criminal record directly and the criminal history record would be electronically transmitted to the WSP. This will streamline the entire background check process for the state.

**Testimony Against:** None.

**Persons Testifying:** Representative Dickerson, prime sponsor; and Chief Scott Smith, Mount Lake Terrace Police Department.

**Persons Signed In To Testify But Not Testifying:** None.